

I. INVESTIGATORY SEIZURE OF PERSONS AND THINGS **(STOP & FRISK)**

Many law enforcement officers misunderstand the investigative seizure of a person referred to as "stop and frisk." Some officers believe that any person walking or driving on a public street is "fair game" and are subject to seizure and a "pat down" search -- nothing could be further from the truth.

The officer must justify two distinct actions:

1. THE ACTUAL STOPPING OR SEIZURE

- a. the reason the person was stopped
- b. the person's activities at the time
- c. the location and time of stop
- d. did this individual fit the description of a suspect in a recent crime
- e. was location a high crime area
- f. was the person a known criminal who carried weapons

2. THE FRISK OR SEARCH

- a. the reason necessary to frisk the individual

REMEMBER: The frisk is merely a limited pat down search of the outer clothing of the subject.

The search is allowed for your protection, so you should be able to justify and articulate the reasons the frisk was necessary. (Bulge in pocket, failure to give a good account of him/her, known background information, etc.)

In Terry v Ohio, the U.S. Supreme Court ruled that a police officer, under certain circumstances, may "stop and frisk" a person for the protection of the officer or society at large. Such action is constitutionally permissible under the Fourth Amendment. The Terry case involved a police officer with 39 years experience (35 as a detective) assigned to a high crime area in downtown Cleveland; an area he had worked for many years. One afternoon, the officer observed three men who appeared to be casing several stores. The officer did not recognize any of the individuals. He continued to observe the activities of two of the men. Within a 12 to 15 minute period, they passed one particular store approximately 12 times and each time stopped to look inside. He thought their actions were indicative of a proposed robbery, so he confronted the three individuals. He conducted a "pat down" search on the outer garments of the subjects and felt weapons in the pockets of two of the individuals. The third individual was not carrying a weapon and was released. The other two were arrested for carrying concealed weapons. One subject pled guilt and the other, TERRY, went to trial, was convicted and appealed. The U.S. Supreme Court ruled this warrantless intrusion permissible stating "...a reasonable and prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." The officer's experience, as well as the articulation of his suspicions, impressed the Court. The Court further stated that the STOP IS A SEIZURE OF A PERSON and the FRISK IS A SEARCH under the Fourth Amendment. However, the warrantless search and seizure can be classified as "exigent circumstances," if expeditious action based on an officer's immediate observations justify his conduct. Police officers are not required to take unnecessary risks in the performance of their duties.

Over the years, the Court has used the "temporary seizure" rationale as applied in the Terry case to authorize the investigative seizure of items such as packages, suitcases and vehicles by utilizing drug dogs for sniff testing to obtain warrants. This is referred to as an investigatory seizure.

During the investigative seizure of persons or things, an officer may develop probable cause to arrest or obtain a warrant. In the case of seizure of a person, an officer may, after establishing "probable cause," search as incident to the arrest.

The following criteria must be met in order for the Court to justify stop (seizure) and frisk (search of outer garments) of a person:

1. Established reason to believe criminal activity is under way.
2. Your observation of an individual engaged in unusual conduct leads you to believe that criminal activity may be under way and the individual may be armed and dangerous.
3. Information obtained from another source such as citizen witness, reliable informant or official report (radio dispatch, etc.) indicates that subject is involved in criminal activity.
4. Same criteria apply to motorists.
5. Initial search was limited to "pat down" of outer garments.
6. Only objects believed to be weapons were removed from the individual's clothing; however, if a weapon was discovered, then a total search as INCIDENT TO ARREST should be conducted.
7. Although a person cannot be coerced to answer your questions, his failure to do so may be sufficient justification to conduct the frisk for your own protection.

Many cases may have been "saved" if the officer would have requested (getting his/her consent) that the person accompany him to the police car or station. If it can be established that the individual willingly consented to accompany you, then it can be demonstrated that the individual waived his/her Fourth Amendment right to the seizure of their person. Remember, you have the burden to prove that the person was in custody voluntarily, without threats, promises or coercion, absent probable cause.

In order for a Terry investigative stop to occur, you must have an actual suspicion that "imminent danger exists or serious harm to persons or property has recently occurred," and that the suspicion is reasonable. When a crime occurs, even a property crime, a police officer has a right and duty to promptly investigate. This might necessarily involve stopping someone when you have reasonable suspicion that the person is involved.

The Alaska Court of Appeals has ruled that a Terry investigative stop can occur based on an anonymous (good citizen) tip, but only if imminent public danger exists. In all other cases, the information must meet the Aguilar/Spinelli two-prong test for reliability and personal knowledge.

INVESTIGATORY SEIZURE OF PERSONS AND THINGS

SELECTED CASES

TERRY v Ohio 392 US 1 (Stop and Frisk Authorized by U.S. Supreme Court) (no bulletin). A police officer, for his own protection as well as others in the area, is entitled to conduct a carefully limited search of an individual's outer garments in an attempt to ascertain if weapons are in possession. Such a search is reasonable under the Fourth Amendment and any weapons seized may be introduced into evidence against the individual who possessed them.

Arizona v JOHNSON (Investigatory seizure of driver and passengers) bulletin no. 335. Gang unit of Tucson Police Department stopped a vehicle after a license check revealed that the registration had been suspended for an insurance violation. Under Arizona law, this type of infraction was a civil matter warranting the issuance of a citation. There were three persons in the vehicle. Johnson was seated in the rear seat. Officers observed that he was wearing a blue bandana and that his clothing was consistent with that worn by the Crips gang. When asked, Johnson gave a police officer his name and date-of-birth but said he did not have his identification with him. One of the officers wanted to talk to Johnson privately and asked him to get out of the car; Johnson complied. The officer felt that, based on Johnson's answers when he was in the car that she should pat him down for weapons. During this process, the officer felt the butt of a handgun. Johnson was arrested for carrying the gun and for being a felon in possession. He argued that he was cooperative and that the officer had no right to conduct the pat down. The court ruled that the same rules apply to drivers and passengers of a vehicle as it does to pedestrians who are subjected to Terry type stops. The rule is: (1) the investigatory stop must be legal; and (2) to proceed from a stop (seizure) to a frisk (search), the police officer must reasonably suspect that the person stopped is armed and dangerous.

ADAMS v Williams 407 US 143 (Search of Person in Vehicle Based on Informant Tip) no bulletin. During the early morning hours, an officer alone on duty in a high crime area was notified by a reliable informant that a person seated in a nearby car was carrying narcotics and had a gun in his waistband. The officer approached the car, tapped on the window, asked the occupant to open the door, but the occupant opened the window instead. The officer was justified in reaching through the opened window, feeling the occupant's waist and seizing the revolver found there. Drugs found on his person were incident to the arrest.

COLEMAN v State (Investigative Stop) bulletin no. 3. Subject, driving a vehicle in the park where a robbery/rape occurred, fit the description of the suspect. Stopping of the vehicle was authorized and evidence observed in the vehicle was in plain view, therefore, establishing probable cause to arrest and subsequent search incident to the arrest.

DUNAWAY v New York (Illegal Seizure of a Person) bulletin no 33. When a person is illegally seized (absent consent, probable cause or stop and frisk justification) any evidence seized, including confessions, will be suppressed.

KAUPP v Texas (confession obtained by exploitation of an illegal arrest) bulletin no. 294. At 3:00 a.m. police are allowed entry into a residence by the father of the 17-year old suspect in a murder case. They go to the suspect's bedroom, awaken him by saying "we need to go and talk." He replies OK. The police put him in handcuffs and take him from his residence to a patrol car. The suspect is dressed only in his boxer shorts, and a T-shirt; he is shoeless. This is in the month of January. Suspect is brought to the police station, placed in an interview room and advised of his *Miranda* rights. He at first denies and then admits to a "part of the crime." It is established that the police did not have enough probable cause to arrest the suspect. The question here is did the police violate the suspect's Fourth Amendment right against unreasonable seizure. The answer is "yes" and the confession must be suppressed.

FREE v State (Stop and Frisk) bulletin no. 39. Police learned through an informant that subject was involved in the theft of guns and intended to use one of the guns to commit an armed robbery. Subject is stopped and patted down. The discovery of guns led to probable cause to arrest and, as incident to arrest, the gun was introduced as evidence at subject's burglary trial.

OZENNA v State (Stop and Frisk) bulletin no. 42. Burglary occurred in early morning hours and subject, a known burglar, had been seen in area. Police see subject and observe his hand under his jacket in the area of his waist. Subsequent pat down revealed weapon, which led to probable cause to arrest. The weapon, taken in the burglary, may be used at trial.

UPTGRAFT v State (Vehicle Search - Plain View Incident to Arrest) bulletin no. 44. Information developed after armed robbery led to investigative stop of suspect vehicle. Weapons were observed inside the vehicle, which led to probable cause to arrest and subsequent search of vehicle as incident to arrest.

Michigan v SUMMERS (Pre-arrest Seizure of Person Executing Search Warrant) bulletin no. 49. Upon their arrival at a residence to serve a search warrant, the police encountered the subject departing. The police made a "temporary seizure" of the individual and forced him to return to the residence while the search was conducted. Search yielded evidence that lead to arrest and evidence found on his person was admissible as incident to arrest.

MUEHLER et al. v MENA (Handcuffing of persons present while police are executing a search warrant), legal bulletin no. 296. At 7:00 a.m. police executed a search warrant at the residence of a known gang-banger who was suspected of being involved in a drive by shooting. There were four persons in the residence, including MENA who was in her bedroom. All subjects were handcuffed and removed to the attached garage. INS, who was assisting the police, questioned MENA about her immigration status while she was handcuffed. The search, which lasted between 2 & 3 hours, yielded weapons, ammunition, gang related paraphernalia and some marijuana. MENA was subsequently released. She brought a civil (1983) suit and prevailed in the lower courts. The judgment against the police (MUEHLER) was upheld by the 9th Circuit Court of Appeals. The U.S. Supreme Court reversed the ruling that the detention in handcuffs during the execution of the warrant was reasonable and that the officers (INS) questioning did not violate the Fourth Amendment.

WAY v State (Seizure, handcuffing and requiring identification for persons present while police search for fugitive; special handling for person know by officer to have previously had a weapon), bulletin no 290. Police have responded to an apartment where they have been informed that a fugitive is located. All of the occupants are removed from the apartment, taken outside, forced to lie on the ground where they are placed in handcuffs. When the police discover that the fugitive is no longer present they pat-down the persons on the ground and require them to identify themselves prior to releasing them. One of the officers recognizes WAY (see bulletin no. 288) from a traffic stop he had made the previous week. At that time WAY's van contained components for a methamphetamine lab and a loaded handgun. Based on this information the officer took WAY aside for special handling. The officer observed a syringe in WAY's pocket. The syringe had blood on the barrel. A pat-down lead to the discovery of cocaine on his person. The court ruled that based on the officer's knowledge of the previous event (the traffic stop) that WAY was associated with drugs and the weapon this special handling was permissible.

UNGER & CAROTHERS v State (Involuntary Seizure of Person) bulletin no. 53. Police made unlawful entry into private residence to arrest defendant. Although the defendant waived his Miranda rights and voluntarily provided a statement to the police, the statement was suppressed because of the initial illegal seizure of the defendant.

KOLENDER v Lawson (Loitering Statute) bulletin no. 70. Stop and frisk is not justifiable if the statute is unconstitutional. Monetary damages cannot be assessed against police if they are enforcing a law on the books.

HIIBEL v Sixth District Court of Nevada (Stop and Identify Statute does not violate Fourth or Fifth Amendments) bulletin no. 283. Police responded to a reported assault. On arrival defendant was standing outside his truck and the female victim was inside the truck. The officer informed the man that he (the officer) was investigating a reported assault and asked the man, who appeared to be intoxicated, to identify himself. The man refused. The officer asked the man on 11 occasions and told him that if he did not identify himself that he would be arrested. He refused and was arrested. The court said this is unlike **KOLENDER** in that the officer was investigating a crime and that a part of that investigation would include identifying possible suspects. Requiring a person in these circumstances does not violate either the Fourth or Fifth Amendments. You cannot however, obtain incriminating statements, only identity.

McBATH v State (Investigate Stop Leads to Identity of Passenger with pre-existing warrants) bulletin no. 295. Police stop a vehicle with an expired license plate. The driver of the vehicle is arrested for DUI. Police call for a tow truck to impound the vehicle. The passenger is informed that he is free to go and the police even offer to call him a cab. The arrested driver asks the passenger to remove a toolbox and some unopened beer from the rear of the vehicle. Fearing a possible later claim of missing items, the police ask the passenger for his name. At first he refuses to identify himself then gives them a phony name.

He ultimately does furnish the police with his correct name and they run a check and learn there are two outstanding warrants for his arrest. As an incident to that arrest McBATH is searched and some drugs are found on his person. He argues that the evidence should have been suppressed because it had been seized as a result of an unlawful investigative stop. The court ruled that regardless of the potential illegality of the investigative stop (of McBATH) the pre-existing warrant was an independent, untainted ground for his arrest. The court also pointed out that the evidence was not found until after McBATH was arrested on the strength of the warrant.

U.S. v PLACE (Sniff Test by Trained Narcotics Dog) bulletin no. 75. Under certain circumstances, it is permissible to make an investigatory seizure of luggage for K-9 sniff test.

WARING & ROBINSON v State (Warrantless Seizure of Person) bulletin no. 76. Mere suspicion or "gut feeling" does not justify a stop and frisk. The officer, absent consent or probable cause, must have articulated facts

justifying a stop and/or frisk. A "fishing expedition," irrelevant of the fact that a thief was apprehended, will not sufficiently justify your actions.

MAJAEV v State (Hand gestures by police - to stop, come to me etc, - result in seizure) bulletin no. 347. You must have a "reasonable suspicion" to justify the seizure of vehicle and/or person.

LINDSAY v State (Involuntary Seizure of Person) bulletin no. 92. Individual illegally seized (no probable cause or stop and frisk justification) and any evidence seized or confessions received will be suppressed.

POOLEY v State (Sniff Test by a Trained Narcotics Detection Dog) bulletin no. 96. Police made a temporary investigative seizure of luggage based on reasonable suspicion that the luggage contained drugs.

GIBSON, Thomas v State (Investigatory Seizure of Package for Dog Sniff) bulletin no. 98. Seizure of package made by private individual employed by an airfreight company was released to police. Court ruled seizure by the individual justifiable on the grounds of reasonable suspicion, since the size of the package allegedly containing tea was sent airfreight.

WILKIE v State (Dog Tracking Evidence) bulletin no. 100. Since trained tracking dog located suspect, police had probable cause to arrest.

SIBRON v New York 392 US 40 (Eight Hours Surveillance Does Not Justify Stop and Frisk) no bulletin. During an eight-hour period, police officers followed and observed a suspect who conversed with known drug dealers and stopped at a restaurant for coffee. Surveillance does not justify a stop and frisk.

YBARRA v Illinois (no bulletin). Although the police had a warrant entitling them to search a bar and the bartender, they could not frisk all occupants of the bar unless their articulated circumstances justified such action. Since this particular bar was open to the public, not all occupants were subject to the search warrant, only those specifically named.

REICHEL v State (Seizure of parolee by police who suspect he is in violation of conditions of his release) bulletin no. 289. Homer police observe REICHEL in a bar. One of the officers suspects that he is violating his conditions of release on parole by being in the bar. Police follow him outside, seize him and call his probation officer who directs the police to arrest him. This takes about twenty minutes. The court ruled, affirming ROMAN above, that the police did not have the authority to make the investigative stop.

O'CONNOR, et al v Ortega (Search of Government Employee's Desk by Supervisor) bulletin no. 111. Government employees do not forfeit their Fourth Amendment rights because the government rather than a private employer employs them. There is no requirement that an employer must obtain a warrant to enter an employee's office, desk or file cabinet when there is a work-related need.

CHRISTIANSON v State (Investigatory Stop of Vehicle With No Imminent Public Danger) bulletin no. 112. Consent to search by non-owner driver was proper. No requirement that imminent public danger existed or recent serious harm to person or property had occurred to justify stop.

State v GARCIA (Investigative Seizure of Person and Luggage at Airport) bulletin no. 116. Officers working airport surveillance may perform an investigative stop only when they have a reasonable suspicion that imminent public danger exists or that serious harm to persons or property has recently occurred. Further, when seizing luggage, they must again have reasonable suspicion before conducting even a minimally intrusive dog drug detection search or seizure of luggage. In this case, the reasonable suspicion clause was not met because the circumstances relied on could have described a large category of travelers who could have been subjected to virtually random seizures.

LeMENSE v State (Investigative Seizure of Person and Luggage at Airport) bulletin no. 117. Investigative stop of a suspected drug courier upheld because the suspicion for the stop was reasonable (unlike State v GARCIA) and a reasonable person would have concluded that the suspect was free to terminate the encounter and walk away. Conversations with the suspect developed further suspicion that justified subjecting luggage to a drug detecting dog search that alerted on the bag, and application for a warrant for the luggage.

Illinois v CABELLES (Drug Dog's Sniff Test During Lawful Traffic Stop) bulletin no. 292. A State Trooper had stopped CABELLES for speeding. A second trooper overheard the radio transmission of the stop and responded to the location with his drug dog. While the first trooper was in the process of writing CABELLES a traffic citation the second trooper walked his dog around CABELLES' vehicle. The dog alerted at the trunk. Based on the alert the troopers searched the trunk, found marijuana and arrested CABELLES. This was not an unnecessarily prolonged stop and the dog alert was sufficiently reliable to provide probable cause to conduct the search.

SMITH v State (Investigative Stop of Vehicle with No Probable Cause) bulletin no. 121. A vehicle can be stopped when the police officer has grounds to believe the license of the driver has been suspended or revoked.

SMITH (Bryon) v State (Investigatory Stop of Vehicle Based on Anonymous Call Reporting DWI) bulletin no. 277. Anonymous caller to Ketchikan Police reports intoxicated male getting into Toyota with Arkansas license plates. Officer responds and observes Toyota pulling away from curb. Driver SMITH is intoxicated and blows a .225 on breath test. He has four prior DWI convictions (one is a felony) from Arkansas. He is charged in AK with felony DWI. He argues that the stop, based on the anonymous caller, was illegal. Court ruled that the police had reasonable grounds to stop the vehicle and such calls (re intoxicated person driving) require "immediate police action to prevent dangerous conduct." Also said exigent circumstances were present.

Michigan v CHESTERNUT (Investigatory Seizure of a Person Absent Probable Cause) bulletin no. 123. Police are not required to have a "particularized and objective" basis for following (not pursuing) a person who runs from a patrol car on routine patrol, as long as a reasonable person would feel he was free to leave (i.e. not seized). While following, the officers observed the defendant abandon property that they recovered and used as probable cause for an arrest.

United States v SOKOLOW (Investigative Seizure of Person and Luggage at Airport) bulletin no. 130. Police can stop and detain a person for investigative purposes, if the police officer has a reasonable suspicion that criminal activity "may be afoot."

DUNBAR v State (Investigative Vehicle Stop; Search of Glove Compartment) bulletin no. 134. During a legitimate "Terry stop" and a subsequent frisk for weapons of a suspect in a vehicle, it is permissible to look inside an unlocked glove compartment for weapons, since this compartment was in easy reach of the suspects and will be again when the suspects get back in their car. A search of an unlocked glove compartment incident to arrest is also permissible. This only applies to unlocked glove compartments.

SATHER v State (Investigative Seizure and Emergency Search of Vehicle) bulletin no. 135. When a driver is found slumped over the wheel of a car, the officer has a duty to perform an investigative seizure of the car and an emergency entry to determine if the person needs medical attention. During the entry, the driver, who was in plain view, was found to be intoxicated and that information was used toward probable cause for arrest.

ALLEN v State (Investigatory Seizure Based on Anonymous Tip) bulletin no. 137. An anonymous caller reported to police that someone in a vehicle was selling drugs. The vehicle was stopped and the driver was arrested for DWLS. The stop was not valid because there was no immediate danger to the public, unlike DWI information from an anonymous caller. Since imminent public danger did not exist, there was no information whether the Aguilar v. Texas two-prong test was satisfied to make the stop valid, i.e. informant had personal knowledge and was reliable.

WILLIAMS, Antonio v State (Investigatory Stop of Vehicle Based on (corroborated) Anonymous Tip) bulletin no. 315. Fairbanks police received a call from an anonymous female who reported that WILLIAMS and two of his friends had rented a vehicle to drive to Anchorage and pick up cocaine and marijuana which they intended to sell in Fairbanks. The caller, who made three separate calls over two days, said she had seen them with drugs before; knew they sold the drugs and had even told them that what they were doing was wrong. The caller told police that the vehicle they were using was a rental and that it had been rented under the name of "Dequan Thomas." Police learned (through a subpoena) that someone using that name had rented the described vehicle from Hertz. The anonymous informant reported that the subjects had departed Anchorage for Fairbanks at 4:30 p.m. Police calculated the estimated time it would take to drive and maintained surveillance on the highway. The vehicle, occupied by three subjects, including WILLIAMS, was stopped. A strong smell of marijuana was detected. The vehicle was seized and a search warrant was obtained. Cocaine, marijuana and a hand-gun were seized. Court ruled that because the police had corroborated all of the information supplied by the anonymous source, they had reasonable cause to stop the vehicle. The smell of marijuana reinforced the stop (seizure) of the vehicle and subsequent arrest of WILLIAMS.

OZHUWAN v State (Investigatory Seizure of Person Absent Reasonable Suspicion) bulletin no. 138. Even though a vehicle is parked in an area where criminal activity is known to occur, you must have reasonable suspicion that the particular vehicle is involved in or soon to be involved in such activity before performing an investigatory stop. When the investigatory stop is made solely to check on the welfare of the occupants, there still must be reasonable suspicion that the occupants might need assistance.

GIBSON, William v State (Investigatory Stop of a Vehicle Without Imminent Public Danger) bulletin no. 141. An investigatory stop of a person (in a vehicle) can be made to investigate a crime that was reported to be in progress

or just occurred, even if no imminent public danger exists. As a practical matter, police must be able to investigate crimes and have a reasonable suspicion, based on witness information, that the person stopped was involved.

ADAMS, John v State (Investigatory Stop of Person is Justified But "frisk" is not) bulletin no. 291. During the evening hours Fairbanks police observe a vehicle parked near a school that had recently been burglarized and vandalized. The driver was outside the car. ADAMS, the passenger was inside. The driver said he had pulled over because he had just picked up a shipment of baleen at the airport and because of the offensive odor he was going to move it. ADAMS said they had pulled over to fix the cover for the spare tire on the front of the vehicle. The officer said ADAMS appeared jittery and was constantly taking his hands in and out of his pockets. The officer decided to pat-down ADAMS for weapons and felt a hard cylinder-shaped object that he immediately recognized as a crack pipe. When the officer removed the pipe, a plastic bag containing white powder (later identified as cocaine), came out. At the suppression hearing the officer testified that although ADAMS appeared nervous during the contact about one-half the people he interviewed are also nervous. He also said that it could be possible that ADAMS was taking his hands in and out of his pocket was because it was a cold night. The officer also said that he felt the need to search about half the people he contacts. The court said the officer was unable to articulate a reason to conduct the pat-down. Whereas the stop and interview was justified the pat-down was not.

ERICKSON v State (Illegal Pat-Down Search Requires Suppression of Evidence) bulletin no. 313. Vehicle was stopped for not having a front license plate. The car was occupied by two males. Neither subject was wearing a seatbelt. ASPIN check revealed that the driver was on probation for robbery. The passenger told the officer he did not have any identification on him but gave his name as Chris ERICKSON and also furnished a date of birth. ASPIN did not have this name in file. The officer ordered ERICKSON out of the car and did a pat-down search. During the pat-down, the officer felt what "he was 100 % sure" was an identification card in ERICKSON's pocket. ERICKSON was then arrested for giving false information. During the subsequent search, drug paraphernalia and residue was found on his person. The court answered two questions: (1) could the officer order ERICKSON out of the car and (2) was the pat-down authorized? The officer could order him out of the car but there was nothing to indicate that ERICKSON was either armed or dangerous so he was not allowed to search him. The not wearing a seat belt is an infraction that, at the time, carried a \$15.00 fine.

Michigan State Police v SITZ, et al (Sobriety Checkpoint) bulletin no. 144. All vehicles passing through a checkpoint were briefly stopped and drivers examined for signs of intoxication. These stops did not violate the Fourth Amendment because: 1) checkpoints were selected pursuant to guidelines and all vehicles were stopped; 2) data indicated the stops would promote roadway safety; and 3) the State's interest in preventing drunk driving outweighed the degree of intrusion upon individual motorists. This stop was classified as an "investigatory" stop. Alaska Courts have not, as yet, addressed this issue; it remains an "open question" until they have occasion to decide a case based on the Alaska Constitution.

Alabama v WHITE (Investigatory Seizure of Vehicle Based on Anonymous Tip) bulletin no. 146. Under the "totality of the circumstances," the anonymous tip, as corroborated, exhibited sufficient information of reliability (reasonable suspicion) that a crime occurred or is soon to occur to justify an investigatory stop of a vehicle. Alaska has not adopted the anonymous tip principle, except where imminent danger exists (i.e. stopping a suspected DWI).

Illinois v LIDSTER (Information (re fatal H&R) Seeking Checkpoint) bulletin no. 276. One week later, and on the same day of the week after a 70-year-old bicyclist was killed in a hit and run accident, the police set up an information-seeking checkpoint at the location of the accident. Each car was stopped for about 10 or 15 seconds and the occupants were asked if they could provide any information about the accident. The drivers were also furnished with a flyer about the fatal hit and run. The defendant's mini van swerved and almost hit a police officer who was manning the checkpoint. The defendant was subsequently arrested for DUI. He maintained that the checkpoint violated the Fourth Amendment. The Illinois Supreme Court agreed with him, but the U.S. Supreme Court reversed.

WRIGHT v State (Investigative Seizure of Person/Luggage at Airport for Sniff Test by Narcotics Dog) bulletin no. 147. A request by a police officer to inspect a person's ID can be done without it turning into a constitutional seizure. A person can consent to a search of luggage without the encounter turning into an investigatory stop. Based on the officer's suspicion, luggage can be seized for a minimally intrusive canine sniff since the suspected crime posed imminent public danger.

McGAHAN and SEAMAN v State (Sniff Test of Warehouse by Trained Narcotics-Detection Dog) bulletin no. 155. A citizen informant notified police of suspicious activity at a warehouse and suspected a marijuana growing operation. Police observed the same circumstances and, based on reasonable suspicion, used a dog to sniff the warehouse exterior using an area accessible to the public. The dog alerted and a search warrant was subsequently issued which led to seizure of a marijuana growing operation. Subsequent search warrants were

issued for the homes of the warehouse occupants. This type of "sniff" would probably be considered a search if the building were a personal dwelling such as a residence.

California v HODARI (Investigatory Chase of Person Who Abandoned Drugs Before Arrest) bulletin no. 157. To constitute a seizure of a person, there must be either application of physical force or submission to a "show of authority." A police officer involved in a foot pursuit (not simply following) did not seize the suspect until he was tackled. Drugs abandoned during the chase, but before the seizure were not the fruit of a seizure.

TAGALA v State (Non-Custodial Interrogation) bulletin no. 158. A non-custodial interview was properly conducted with a shooting suspect without advisement of *Miranda* rights. A second interview was held, but this time *Miranda* warnings were given. During this second interview, the suspect invoked a limited assertion of his right to remain silent by refusing to discuss his involvement in drug sales, but at the same time indicating he was still willing to discuss the shooting. This limited assertion was found to be proper and discussions about the shooting after the limited assertion were admissible.

MOORE v State (Warrantless Search of Person Present in Residence During Execution of Warrant to Avoid Destruction of Evidence) bulletin no. 163. Police executed a search warrant at a "crack house." A female in the house was subjected to a pat down search and nothing was found, although a bag of cocaine was on the floor near her feet. She was then subjected to a full search based on circumstances developed at the scene. The search was proper because probable cause was developed to justify the search: the officer knew it was common practice for females to hide drugs on their person at "crack houses," numerous individuals tried to flee the scene or avoid contact with police when the warrant was served, destruction of evidence was a distinct possibility, and the residence was not a public facility where innocent people were more likely to be present.

WILLIE v State (Investigative Seizure of Carton Containing Alcohol Prior to Issuance of a Search Warrant) bulletin no. 168. Probable cause was developed by a VPSO to seize a carton thought to contain alcohol (reliable informant and observations of the suspect's being intoxicated in a dry village). The box was seized so they could apply for a search warrant. Handling the box prior to opening it gave new information to the VPSO that the box contained alcohol and additional ample probable cause for issuance of a search warrant.

BEAUVOIS v State (Investigatory Stop of Vehicle Without Probable Cause) bulletin no. 173. A robbery of a store occurred at 2:50 am. The victim furnished police with a description of the suspect, who had departed on foot, as well as his direction of travel. In a campground in that direction of travel a vehicle was seen leaving the area and this was the only vehicle moving. The vehicle was stopped on this basis alone. The stopping of the vehicle was justified because: 1) a serious felony had just occurred in the general area, 2) most people would be asleep; and 3) there was only one vehicle moving and these people may have seen something which could aid their investigation.

GOODLATAW v State (Investigatory Stop of DWI Suspect Vehicle Based on Anonymous Tip) bulletin no. 175. An investigatory stop need not be supported by probable cause - reasonable suspicion is sufficient. In this case, an anonymous tipster reported a suspected DWI. The suspect was stopped without any observations indicating the driver was possibly intoxicated. Further investigation during field sobriety testing led to an arrest.

HAYS v State (Investigatory Stop of Vehicle - No probable Cause) bulletin no. 177. A misdemeanor theft had just occurred and a "locate" was issued for the suspect vehicle. A vehicle was stopped that generally matched the description, but it had the wrong number of occupants and the wrong license plate. The vehicle was not involved in the theft, but it turned out that the driver had a revoked license. Although a well-founded suspicion that a crime had just occurred can justify a stop even though it is a minor crime, there was no practical necessity to immediately stop the vehicle without further information to justify the stop of this particular vehicle, i.e. there was not enough probable cause to stop the vehicle.

Minnesota v DICKERSON (Investigatory Seizure of Crack Cocaine Based on "Plain Feel") bulletin no. 178. During a Terry "stop and frisk," a warrantless seizure of evidence can be based on the object being "immediately apparent by plain feel." In this case, the seizure of cocaine was not valid because the contraband was not immediately apparent as cocaine until repeated manipulation by the officer, but the concept of "plain feel" was validated.

State v WAGAR (Pat-down Search For Weapon Turns Up Cocaine Vial) bulletin no. 273. During a pat-down frisk a police officer felt a hard object, approximately three inches long, in the subject's T-shirt pocket. The officer asked the subject what the object was and he said he didn't know. The officer manipulated the object so he could look into the pocket and discovered that it was a glass vial containing white powder. It was seized and tested positive for cocaine. WAGAR was charged with possession. The state supreme court, reversing the court of appeals, said the officer was justified in examining the object because it could have been a potential weapon.

AMBROSE v State (Pat-down Search for Weapons as Incident to Arrest Reveals Package That Could Contain Weapon – On removal Package is Found to be "Bindle" that Officers Testifies is Single-purpose Container Used to

Carry Illegal Drugs) bulletin no 346. Officer stops a vehicle because it did not have a rear bumper. APSIN checks reveal that the driver was a convicted sex-offender who was not in compliance with registration requirements. During the search "incident to arrest" the officer felt a small rectangular object. Fearing the object could contain a weapon, such as a razorblade, the officer removed the object and discovered it was a bindle; a single-purpose container he knew is used to carry illegal drugs. The container contained cocaine. The initial seizure was upheld as a weapons search. The search of the bindle was justified because it was "immediately apparent" to the officer that bindles are used to carry illegal drugs.

JONNA ROGERS-DWIGHT v State (Investigatory Seizure of Person Absent Reasonable Suspicion) bulletin no. 193. While making a traffic stop, the officer made contact with another vehicle that had also stopped with the intention of informing the driver that she was free to leave. During this contact, he observed classic signs and suspected the driver had been drinking. The officer had reason to contact the driver and as a community caretaker had a responsibility to take action.

Michel S. WEIL v State: (Community caretaker stop upheld) bulletin no. 352. About 2:30 a.m. a State Trooper saw a man operating a four-wheeler near a main highway. The four-wheeler had a dog tethered to the machine and they were about twenty feet from the main road. The Trooper was concerned that if the four-wheeler crossed the main road it could create a dangerous situation for motorists as well as the driver of the four-wheeler and the dog. The Trooper activated his overheads and upon contacting driver WEIL discovered he was intoxicated. Breath test was .226 percent. WEIL argued the Trooper lacked probable cause. The court said the stop was justified to avoid a potential threat to public safety.

WHREN and BROWN v U.S. (Traffic Stop for a Minor Violation by Plainclothes Officers Passes "Reasonable Officer Test") bulletin no. 202. Officers made traffic stop when their suspicions were aroused because the vehicle had made an illegal turn at unreasonable speed. The constitutional reasonableness of a traffic stop does not depend on the actual motivations of the individual officers. The usual rule is "probable cause to believe the law has been broken outbalances private interest in avoiding police contact."

NEASE v State (Traffic Stop For Equipment Violation of Driver With DUI History) bulletin no 293. Juneau police officer observed NEASE drinking in a downtown bar. About a week before, the same officer had chased NEASE's vehicle because of speeding. By the time the officer got to the vehicle NEASE was outside of it. He was obviously intoxicated but denied that he had been driving the vehicle. The officer did not arrest him but said he would get him next time. On the day of this event the officer saw (after having seen him in the bar) the vehicle parked in a restaurant parking lot. While turning around to return to the lot NEASE had gotten into the vehicle and entered the highway. The officer followed NEASE who committed no traffic violations. When NEASE stopped at a red-light the officer noticed that there was an inoperative brake light. NEASE was stopped, found to be intoxicated, and arrested for DUI. NEASE argued that this was a "pretext" stop and that the officer had no probable cause to stop him. The court ruled that when the officer observed the equipment violation he had probable cause to make the stop.

Maryland v WILSON (Ordering a Passenger Out of a Lawfully Stopped Vehicle) bulletin no. 214. Police ordered a passenger out of a vehicle. When the passenger exited the vehicle, police observed a quantity of crack cocaine fall to the ground. The passenger was arrested. The Supreme Court considered this additional intrusion on the passenger as minimal, but did not consider in this case whether the passenger could be detained the entire duration of the stop.

RYNEARSON v State (Seizure of Luggage at Airport Based on Anonymous Tip) bulletin no. 221. An anonymous tip was received stating the defendant was transporting drugs in her luggage. The court determined that Aguilar-Spinelli was satisfied since the information furnished satisfied personal knowledge and further information provided demonstrated reliability. The court also determined that the stop prior to obtaining the search warrant where the officers learned that the defendant was carrying a prescription for Valium was not wholly innocuous.

State v PRATER (Investigative Stop of Suspected DUI Based on Police Dispatcher Information) bulletin no. 226. The defendant was stopped based on a police radio locate. This type of information can be considered in determining whether there is reasonable suspicion to justify the stop. The information is justified if the dispatcher has reasonable suspicion that imminent public danger exists. This reasonable suspicion can be based on a sufficiently detailed telephone report.

KNOWLES v Iowa (Search of Vehicle Incident to a Traffic Citation) bulletin no. 230. A vehicle was stopped and the driver issued a citation for speeding. The vehicle was searched and drugs were found. The vehicle was illegally searched because the officers did not have the consent of the owner, probable cause, nor incident to custodial arrest.

Illinois v WARDLOW (Seizure of Person Fleeing From Known Narcotics Trafficking Area) bulletin no. 236. Police tactical unit observed Wardlow in known drug trafficking area. When he saw police, he ran. Police apprehended and “patted down,” during which time a gun was found. No Fourth Amendment violation here.

Florida v J. L. (Seizure of Juvenile Based on Anonymous Tip Lacked Probable Cause) bulletin no. 239. Anonymous caller reported a young black male at a particular intersection was carrying a gun. Anonymous tip, in and of itself, is not sufficient to conduct pat down.

BOND v U. S. (Manipulation of Passengers Carry-On Luggage) bulletin 240. Border patrol officer checked bus and, in so doing, squeezed a soft luggage bag where he felt a brick like object. He got consent to search and found methamphetamine. Court ruled that officers “physical manipulation” of a passenger’s carry-on luggage violates the Fourth Amendment. It should be noted however, that the government in this case did not argue the consent aspect.

CASTLE v State (Illegal Seizure of Passenger in Vehicle) bulletin no. 241. Police stop a vehicle for an equipment violation. It turns out that there is an outstanding warrant for the arrest of the driver. While taking the driver to the police car, the officer tells CASTLE, a passenger, to stay in the car. CASTLE says, “I have to leave.” The officer says, “Hold on I’ll be right back.” CASTLE runs from the scene and is later apprehended. He has some drugs on his person. Court says officer had no probable cause to seize the passenger. Neither safety concerns nor anything to suggest he had committed a crime in the officer’s presence.

BRENDLIN v California (Evidence Seized From Illegally Seized Passenger Must Be Suppressed) bulletin no. 321. Police observed a vehicle with a temporary registration form with the number “11” affixed. The vehicle was being driven by a female. Police decided to stop the vehicle in spite of the fact, as they later testified, there was nothing unusual about the temporary registration and they knew that the “11” meant the temporary registration was good until the end of November. The stop occurred on November 27. Police recognized the passenger, BRENDLIN, as a person they thought was on parole. Records check revealed there was a no-bail warrant for BRENDLIN’s arrest. The charge was violating conditions of his parole. During the search of his person and the vehicle, as incident to the arrest, police discovered evidence that lead to BRENDLIN being charged with “possession and manufacture of methamphetamine.” He argued that because the police did not have probable cause, or reasonable suspicion to stop the car, the evidence seized from him should be suppressed. The USSC agreed. They ruled the stop amounted to an illegal seizure under the Fourth Amendment and that passengers as well as the driver of the vehicle are “seized.” Because of the illegal stop, the evidence must be suppressed.

JOSEPH v State (Police Did Not Have Grounds for Investigatory Stop/Seizure of a Person) bulletin no. 316. Unknown person calls 911 to report two men smoking a “joint” at a particular location. Responding officer sees two men fitting the description talking to two women who are sitting in a minivan. The officer calls one of the men to him and can smell the odor of marijuana coming from the rear where the men and women are. The officer decides to handcuff the man for his protection. At this time the second man begins to walk away. The officer tells him to stay put and asks a community patrol volunteer who is on the scene to watch the handcuffed man. The second man runs away. As the officer gains on him the man throws out a plastic baggy containing a white chalky substance about the size of a golf ball. The running man is caught and identified as JOSEPH. The baggie is seized and found to contain 20 individually wrapped packets of rock cocaine. The court ruled that the officer did not have lawful grounds for chasing JOSEPH and subject him to an investigative stop. The baggie was thrown away after the chase began. This means the officer, by way of the chase, had attempted to seize JOSEPH and the evidence was not abandoned. The evidence must be suppressed.

COFEY v State (Illegal Seizure of Person Requires Evidence to be Suppressed) bulletin no. 344. Police responded to a reported fight, or disorderly conduct call. The dispatcher had related that some of the persons involved had departed the area in a vehicle. On arrival the officer saw two persons on the street to the rear of the residence. One of the individuals ran away. COFEY was going to leave the area but the officer activated his overhead lights and instructed him to stay because he wanted to talk to him. During the conversation Cofey put his hands in his pockets on several occasions. The officer could see something hard in one of the pockets so, at gun point, told Cofey to take his hands from his pockets. Cofey complied by putting his arms up in the air. Cofey had a baggie containing cocaine in his hand. The hard object observed by the officer turned out to be a cell phone. Prior to the officers contact Cofey had done nothing to suggest that he was either armed, or dangerous. Cofey was charged and convicted for possession of the cocaine. The court ruled that the evidence (cocaine) must be suppressed because the officer had clearly seized Cofey when he activated the overhead light and this seizure was not supported by a reasonable suspicion that Cofey or a reasonable person in Cofey’s position would not feel free to leave. The court goes on to say that there is nothing to preclude an officer from asking to speak with a person.

MILLER, Michael v State (REVERSED May 2009 see bulletin no. 339) (Investigatory Stop of Vehicle Was Not Supported by Reasonable Suspicion) bulletin no. 317. Unknown person calls 911 to report a man and woman arguing in the parking lot of a local bar. The caller said the argument was verbal, not physical, and said she did not know if they were a coupe or maybe a brother and sister. The caller reported they were standing next to a white Subaru. A police officer responded and saw a white Subaru occupied by two females and a male getting ready to leave the area. The officer activated the overhead lights stopping the vehicle. The officer asked the occupants if they needed assistance and they all reported they did not. The officer smelled alcohol on the driver, MILLER, and asked him to take a breath test; he refused. MILLER was subsequently arrested for DUI and failure to give a breath test. He argued that there was no reason to stop the car and the evidence should be suppressed. The court agreed stating "verbal arguments, (citing JONES bulletin 243) standing alone, do not justify detention." There was no objective basis for the officer to believe that a crime had been committed.

The Alaska Supreme Court reversed (see bulletin no. 339) the Court of Appeals ruling that the police officer was justified in making the investigative stop. The court ruled that the police officer did have a reasonable suspicion that a domestic violence incident had occurred and that the stop was not a pretext to stop the vehicle to find evidence that MILLER was driving while intoxicated.

HAMILTON v State (Investigatory Stop of Vehicle with Obscured License Plate) bulletin no. 263. Police stop a vehicle that had recently been observed where a homicide had taken place. A male occupied the vehicle. Prior to the stop, the officer noticed that the rear license plate was covered with snow. The officer first brushed the snow away so she could report the number to dispatch and then contacted the driver whose hands were "covered with blood." As a result of the stop, evidence was seized from both the car and the person of HAMILTON. The court ruled the stop was justified because of (1) the obscured license plate; and (2) for investigatory purposes because the driver might have had information (witness) concerning the homicide.

HAAG v State (Investigatory Seizure of Armed Robbery Suspect Leads to Show-Up) bulletin no. 298. Police respond to report of two black males wearing dark clothing and ski masks are in process of committing home invasion/armed robbery. Police arrive within minutes and see HAAG running from the direction of the victim's residence. Police seize HAAG at gun point and handcuff him. Although he is a white male, he is dressed in black and has on dark gloves. Police transport him back to the scene where a witness identifies him by his size and clothing. Later police find an Rx bottle in the name of the victim in the rear seat of the patrol car where HAAG had been confined. They also find a gun in the area HAAG was running. Court ruled this was a proper investigative seizure and that the subsequent show-up was proper.

WAY v State (Investigatory Stop of Vehicle with Obscured License Plate Leads to Search Warrant) bulletin no. 288. AST had a tip that a van owned by WAY was being used as a mobile methamphetamine lab. A trooper saw the van driving past him and attempted to read the license plate but discovered that the plate had been bent in an upward position so as to make the numbers illegible. The van was stopped and the odor of iodine was smelled. White powder was noticed in plain view and an item used in the manufacture of methamphetamine was also observed. A search warrant was obtained to search the van. No citation was ever issued regarding the obscured license plate. WAY was subsequently charged with misconduct involving a controlled substance. He argued that the troopers lacked probable cause to stop the van and that the stop was merely a pretext to stop the van to investigate the methamphetamine tip. The court ruled that the troopers had ample probable cause to stop the van because AS 28.10.171(B) requires that vehicle license plates must be clearly legible.

CLARK, Scott v State (Stop of Vehicle with Expired Registration and Broken Taillight – no MIRANDA issue) bulletin no. 297. Anchorage Police stopped a vehicle with expired registration and a broken taillight. The driver was asked to produce his driver's license, vehicle registration, and proof of insurance. He told the officer that he did not have insurance and was cited for this violation. At trial, he argued that his admission should be suppressed because the officer failed to give him his MIRANDA warnings. The court ruled that "routine" traffic stops do not implicate the constitutional right to remain silent.

JONES v State (Illegal Seizure of Person in Landlord/Tenant Dispute) bulletin no. 243. While investigating a dispute between a landlord and tenant, the tenant, JONES, was ordered outside. He had committed no crime in the presence of the officers and wanted to leave. Because his hands were in the area of his fanny pack, the officers told him to keep his hands where they could see them. He decided to leave the area and was tackled by the officers. Drugs were found. They had no right to seize JONES because he had not committed a crime. He was also convicted for resisting arrest. The court sent that case back for further review, but the drugs must be suppressed.

Illinois v McCARTHUR (Seizure of Residence While Awaiting Search Warrant) bulletin no. 245. Police responded to a domestic violence call. Wife said husband had some drugs hidden in the house. Police asked for consent to search, he refused. He was ordered outside the residence and was not allowed entry (cigarettes & phone calls) without an officer. Second officer applied for and obtained a search warrant. Seizure is reasonable.

ALBERS v State (Under Certain Circumstances You May Order A “Detained” Person to Unclench Their Hands) bulletin no. 254. ALBERS was seized pursuant to legitimate stop. He refused to unclench his hands. When ordered to do so at the point of a gun he did so and in the process dropped some drugs. If police can articulate that the subject is concealing something that may harm them, they may order the subject to open his hands, even if he is not under arrest.

McGEE v State (Itemizer “sniff test” Lacked Probable Cause) bulletin no. 257. Police intercepted a FedEx package and subjected it to an itemizer “sniff test.” They lacked probable cause to justify the initial seizure of the package.

YOUNG v State (Concealment of Evidence Does Not Constitute Abandonment – no reasonable suspicion to justify handcuffing for investigative detention) bulletin no. 268. Young was observed by a police officer at a motel that had a reputation for drug use. When he saw the officer, he walked away and then got on his knees and put something under a door. The officer handcuffed him and then recovered the objects, which turned out to be rocks of crack cocaine. The officer has no probable cause to seize the subject nor did the subject discard or “abandon” the property. Rather, he was concealing it from the officer.

REICHEL v State (Seizure of parolee by police who suspect he is in violation of conditions of his release) bulletin no. 289. Homer police observe REICHEL in a bar. One of the officers suspects that he is violating his conditions of release on parole by being in the bar. Police follow him outside, seize him and call his probation officer who directs the police to arrest him. This takes about twenty minutes. The court ruled, affirming ROMAN above, that the police did not have the authority to make the investigative stop.